

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Applications of ) MM Docket No. 93-88  
)  
EZ Communications, Inc. ) File No. BRH-910401C2  
)  
For Renewal of the License )  
of FM Radio Station WBZZ(FM) )  
on Channel 229B at Pittsburgh, )  
Pennsylvania )  
)  
Allegheny Communications Group, Inc. ) File No. BRH-910628MC  
)  
For a Construction Permit for a New )  
FM Broadcast Station on Channel 229B )  
at Pittsburgh, Pennsylvania )

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Office of Secretary

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To: The Honorable Edward Luton  
Administrative Law Judge

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

EZ Pittsburgh, Inc. ("EZ") and Allegheny Communications Group, Inc. ("ACGI"), by their attorneys and pursuant to Section 73.3523 of the Commission's rules, hereby jointly petition for approval of the attached Settlement Agreement, which would result in the dismissal of ACGI's application and grant of EZ's application upon the occurrence of certain conditions described herein.

**Background**

ACGI has filed a construction permit application that is mutually exclusive with the pending renewal application of EZ. Both applications were the subject of a comparative hearing held in the fall of 1993 before the Presiding Judge. No qualifications issues were added against EZ's application, and the Mass Media Bureau filed in support of a grant of EZ's application. To date, an Initial Decision has not been released.

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In order to resolve the conflict between these applications, the parties have entered into a Settlement Agreement, a copy of which is attached as Exhibit A. The Agreement provides for dismissal of ACGI's application with prejudice, grant of EZ's application, and the reimbursement of ACGI by EZ in an amount in excess of ACGI's reasonable and prudent expenses incurred in preparing, filing and prosecuting its application. The Agreement is subject to receipt of prior Commission approval, and such approval as well as dismissal and grant of the ACGI and EZ applications, respectively, must become a final order before EZ is obligated to make the payment to ACGI.

Approval of the Settlement Agreement requires waiver of Section 73.3523 of the Commission's rules because the settlement payment would be made prior to release of an Initial Decision in this comparative renewal case, and because the payment specified in the Agreement exceeds the amount permitted by that rule at any point in the proceeding. ACGI and EZ submit that such a waiver is warranted because the relevant provisions of Section 73.3523 no longer serve a public interest purpose and should be waived, as explained in detail below, in light of changed conditions which have delayed release of the Initial Decision in this case and which have also rendered Section 73.3523 a nullity. The circumstances here are also unique and would not lead to a flood of other cases seeking to depart from Section 73.3523. Thus, the parties urge the Presiding Judge promptly to waive Section 73.3523 of the Commission's rules and to grant the Settlement Agreement or immediately certify the question of the appropriateness of a waiver to the full Commission for determination.

Approval of the Settlement Agreement Complies with Section 311(d), and a Waiver of  
Section 73.3523 Is Justified in This Case

Section 311(d) of the Communications Act, 47 U.S.C. § 311(d), governs the Commission's disposition of any settlement agreement proposed by a renewal applicant and its challengers.

Section 311(d) provides that the Commission shall approve such an agreement if the agency determines that it meets two requirements: "(A) the agreement is consistent with the public interest, convenience, or necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement."<sup>1</sup>

In 1989, after notice and comment rulemaking, the FCC concluded that some parties were filing applications against renewal applicants, not to secure a broadcast license but solely to obtain monetary settlements, and the agency determined that restrictions were needed to curb the abuses.<sup>2</sup> As a result, the FCC adopted restrictions on the timing and amount of settlement payments. The new rule banned all payments to competing applicants for the withdrawal of an application prior to release of an Initial Decision in a comparative renewal hearing.<sup>3</sup> The new rule did allow settlement payments after release of an Initial Decision but restricted such payments to reimbursement of the legitimate and prudent expenses incurred by the withdrawing party in filing and litigating its application.<sup>4</sup>

In this case, EZ and ACGI submit that a waiver of both the temporal and monetary limits is appropriate and will serve the public interest. ACGI's application was filed in June 1991 after the renewal settlement restrictions in Section 73.3523 had already been adopted, and such restrictions limited its expectations at the time of filing. Since then, ACGI has spent over five years prosecuting its application through the motion, discovery, and hearing stages. Nonetheless, ACGI has yet to obtain an Initial Decision.

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<sup>1</sup> 47 U.S.C. § 311(d).

<sup>2</sup> Broadcast Renewal Applicants (Abuses of Comparative Renewal Process), 66 RR 2d 708, 715 (1989).

<sup>3</sup> 47 C.F.R. § 73.3523(b)(1).

<sup>4</sup> 47 C.F.R. § 73.3523(c)(1).

This delay, however, has been caused by developments totally beyond the control of applicants such as ACGI and EZ. As the Commission recently acknowledged in waiving the temporal restriction in Section 73.3523(b)(1) for a ninety-day period, the United States Court of Appeals for the District of Columbia Circuit in 1993 invalidated the integration criterion used by the FCC to select among applicants in comparative proceedings.<sup>5</sup> As a result, the FCC effectively "froze" all comparative cases, halting the processing of comparative applications and adjudication of comparative renewal proceedings, such as ACGI's and EZ's, while it re-examined its comparative criteria in light of the Bechtel decision.<sup>6</sup> As the Waiver Public Notice further explained, a recent United States Supreme Court decision, Adarand Construction v. Pena, 515 S.Ct. 2097 (1995), also required revaluation of the consideration that the FCC gives to race in comparative hearings, and the FCC said it would "take some time" to assess the effect of this additional development on the agency's comparative criteria.<sup>7</sup>

Because of the delay occasioned by Bechtel, the FCC's "freeze" on the processing of comparative applications, and Adarand, none of which applicants such as ACGI and EZ could have anticipated, the Commission determined that it was appropriate to waive Section 73.3523(b)(1) and allow monetary settlements of renewal cases in advance of release of an Initial Decision. For the ninety-day period following September 15, 1995, the FCC allowed

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<sup>5</sup> FCC Public Notice, "FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy," 10 FCC Rcd. 12182 ("Waiver Public Notice"), discussing Bechtel v. FCC, 10 F. 3d 875 (D.C. Cir. 1993).

<sup>6</sup> Public Notice, "FCC Freezes Comparative Proceedings," 9 FCC Rcd. 1055 (1994); FCC Public Notice, "Modification of FCC Comparative Proceedings Freeze Policy," 9 FCC Rcd. 6689 (1994).

<sup>7</sup> Waiver Public Notice, 10 FCC Rcd. at 12182.

parties who had not yet received an Initial Decision in their cases to dismiss their applications in exchange for reimbursement of the legitimate and prudent expenses they had incurred in prosecuting their applications.<sup>8</sup>

ACGI and EZ contend that the same reasons that justified a Commission waiver of the temporal limit last fall continue to support such a waiver. Moreover, even more significant changes since that period compel waiver as well of the limit on the amount of the settlement payment to be made in this case prior to release of the Initial Decision. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996, which added a new Section 309(k) to the Communications Act. This section eliminates the right of challengers to file applications, such as ACGI's, against an incumbent licensee's renewal application.<sup>9</sup> Thus, the Congress has removed any opportunity for challengers to initiate comparative renewal proceedings and rendered Section 73.3523 a nullity.<sup>10</sup> Without the opportunity to file and precipitate a hearing, the Commission's rules no longer need to address limits on settlements of such hearings as a means of deterring non-bona fide filings, and enforcement of the rule no longer serves any public interest purpose.<sup>11</sup>

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<sup>8</sup> Id.

<sup>9</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>10</sup> In adopting the restrictions in Section 73.3523, the FCC, recognizing that challengers had the opportunity, incentive, and mechanisms to file non-bona fide applications intended only to secure a monetary pay-off, said that it was addressing the incentives and the mechanisms that helped give rise to such filings. Broadcast Renewal Applicants, 66 RR 2d at 715. Congress has now acted to remove the underlying opportunity entirely.

<sup>11</sup> In fact, the parties are informed by the Mass Media Bureau's Hearing Division staff that only five comparative renewal hearing proceedings remain unresolved and pending before administrative law judges. Of these, one is the subject of a proposed settlement involving a merger of the applicants. Another has resulted in designated qualifications issues against the incumbent licensee, unlike the situation here. The other three remaining proceedings,

(continued...)

Nothing in Section 311(d) of the Communications Act or its legislative history prohibits the Commission from waiving either the timing or the limit on the amount of a monetary settlement if the agency otherwise determines that no party has filed its application for the purpose of obtaining a settlement and that the agreement is consistent with the public interest, convenience, and necessity. Indeed, in floor debate on Section 311(d), Representative Wirth specifically noted that "the intent of the Congress was not, in any way, to prevent an incumbent licensee from making a payment in excess of expenses to a party challenging that licensee as a means of settling a challenge" except when the applicant was not bona fide.<sup>12</sup>

In adopting Section 73.3523, the FCC stated that it was pegging the permissibility of payment to release of an Initial Decision because perseverance through that point in a proceeding was indicative of good faith:

By banning all settlement payments through the Initial Decision stage, we are further reducing the potential for abuse. First, we are increasing the likelihood that only serious, bona fide applicants will have the opportunity to settle out their competing applications. It is time consuming and expensive to litigate an application through the Initial Decision stage. Moreover, an applicant that makes it through the Initial Decision stage has demonstrated that it is willing to develop a complete record on all pertinent hearing issues including technical issues, standard comparative issues and any basic qualifications issues designated . . . . For these reasons, we believe that an applicant's prosecution of its application through the Initial Decision stage is a persuasive indication of the bona fides of the application. Thus, restricting settlements to the post-Initial Decision stage helps ensure that settlements will be among bona fide competing applicants and incumbents only.<sup>13</sup>

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<sup>11</sup>(...continued)  
including this one, have concluded the hearing phase and do not involve any qualifications issues against the incumbent.

<sup>12</sup> 127 Cong. Rec. 18956 (1981)(remarks of Cong. Wirth). The legislative history of Section 311(d) is otherwise scant. See H.R. Conf. Rep. No. 97-208, 97th Cong., 1st Sess. 898, reprinted in 1981 U.S.C.C.A.N. 1010, 1260 (1981).

<sup>13</sup> Broadcast Renewal Applicants, 66 RR 2d at 715 (footnote omitted).

Thus, prosecution through the Initial Decision stage is compelling evidence of a bona fide application.

In this case, ACGI has done everything within its power to litigate its application through the Initial Decision stage. It has filed and defended against requests for addition of issues, conducted full-blown discovery, including depositions, participated in a lengthy hearing before the Presiding Judge, and submitted findings of fact and conclusions of law and reply findings and conclusions. The Bechtel decision and the subsequent "freeze," however, have made it impossible for ACGI and EZ to reach the Initial Decision stage of this proceeding. But for such circumstances beyond the parties' control, this five-year old proceeding would long ago have resulted in an Initial Decision, and, in the FCC's explanation quoted above, further demonstrated ACGI's bona fides as an applicant.<sup>14</sup>

There is no doubt that the Commission has broad authority under Section 311(d) to decide whether settlement agreements should be approved or disapproved under the public interest, convenience, and necessity standard.<sup>15</sup> At the same time, the FCC has acknowledged that when abuse is not a factor, settlements are to be encouraged as "an efficient way to resolve comparative licensing proceedings, preserve funds for service to the

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<sup>14</sup> Cf. National Broadcasting Co., Inc. (KNBC), 19 RR 2d 634 (1970)(despite the FCC's then existing policy of not approving any settlements of comparative renewal cases, approving joint request for settlement in light of changed circumstances occasioned by change in standards announced in a court decision and a new FCC policy statement).

<sup>15</sup> Broadcast Renewal Applicants, 66 RR 2d at 717. ("As long as the Commission determines that 'no party to the agreement filed its application for the purpose of reaching or carrying out such an agreement,' the Commission has broad authority under Section 311(d) to decide whether settlement agreements should be approved or disapproved under the public interest, convenience, and necessity standard.")

public, and allow . . . [the] conserv[ation of] unlimited administrative resources."<sup>16</sup> Such settlement of ongoing litigation is to be favored:

Given the facts that law and society both generally favor settlement of competing claims and that requiring an applicant to prosecute its application when it clearly has no interest in doing so would be anomalous, we believe that any detriment stemming from the loss of a choice between applicants is more than offset by the overall benefit to the public interest attributable to the termination of the litigation.<sup>17</sup>

Given the changed circumstances that have occurred since the filing of ACGI's application, particularly the "freeze" on comparative hearings and the abolition of the right to file applications challenging renewal applications, this proposed settlement evidences exactly the kind of "good cause" the Commission recently indicated would need to be presented for it to consider further waivers of its settlement rules.<sup>18</sup>

The terms of the attached Settlement Agreement, including the proposed settlement amount, have been freely negotiated between ACGI and EZ and reflect each party's estimate of the value of settlement to it. Any failure to settle the proceeding at this point raises the prospect of further litigation before both the FCC and the courts. Not only would such litigation be extremely expensive, but, from EZ's standpoint, it would also be terribly disruptive of the ongoing operations of WBZZ(FM). It would require the attention and input of staff at both the station and the company's headquarters. In addition, as has been announced in the trade press and is reflected in a pending application for Commission consent, EZ has proposed to merge into a much larger radio company. (See FCC File Nos. BTCH-961001GG et seq.) Pendency of the WBZZ(FM) renewal presents issues that the

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<sup>16</sup> Id. at 716.

<sup>17</sup> Western Connecticut Broadcasting Co., 50 RR 2d 1335, 1339 (1982).

<sup>18</sup> Settlements in Comparative Broadcast Proceedings, 2 Com. Reg. 1240, 1243 (1996).



parties to the merger believe they have addressed in the merger contract, but the solution is nonetheless administratively complicated to effectuate. The negotiated payment amount set forth in the Settlement Agreement reflects all these concerns and is a marketplace decision of the type courts ordinarily respect. There is no reason, particularly in light of the changed legal circumstances discussed above, for the FCC to act any differently.

Attached as Exhibits B and C are declarations, respectively, of Herbert E. Long, Jr., president of ACGI, and Alan L. Box, president of EZ. Mr. Long's declaration provides that the ACGI application was not filed for the purpose of reaching or carrying out an agreement regarding the dismissal or withdrawal of its application and that the Settlement Agreement constitutes the complete agreement between the parties. Mr. Box's declaration provides that the Settlement Agreement represents the complete agreement between the parties.

For the reasons set forth above, and on the basis of the affidavits submitted herewith, ACGI and EZ respectfully request that the Commission approve this Settlement Agreement and concurrently dismiss ACGI's application and grant EZ's application.

Respectfully submitted,

EZ PITTSBURGH, INC.

By 

M. Anne Swanson

of

Koteen & Naftalin

Suite 1000

1150 Connecticut Avenue, N.W.

Washington, D.C. 20036

(202) 467-5700

Its Attorneys

Respectfully submitted,

ALLEGHENY COMMUNICATIONS  
GROUP, INC.

By 

Gene A. Bechtel

of

Bechtel & Cole, Chartered

1901 L Street, N.W.

Suite 250

Washington, D.C. 20036

(202) 833-4190

Its Attorneys

November 12, 1996

**EXHIBIT A**

## SETTLEMENT AGREEMENT

This Agreement is made this 9th day of November, 1996, by and among EZ Pittsburgh, Inc. ("EZ"), Allegheny Communications Group, Inc. ("ACGI"), and ACGI's officers, directors, and shareholders who have individually executed this Agreement below (the "ACGI Principals") (collectively, the "Parties").

### W I T N E S S E T H

WHEREAS, EZ is the applicant for renewal of the license of radio broadcast station WBZZ(FM), in Pittsburgh, Pennsylvania, (FCC File No. BRH-910401C2) (the "EZ Application") and ACGI has filed a competing application for a construction permit specifying the channel for which WBZZ(FM) is seeking renewal of license (FCC File No. BPH-910628MC) (the "ACGI Application");

WHEREAS, because the EZ and ACGI Applications are mutually exclusive with each other, they have been designated for comparative hearing in MM Docket No. 93-88 (the "WBZZ Hearing") to determine which application should be granted;

WHEREAS, no issues have been added in the WBZZ Hearing to determine whether EZ possesses the basic qualifications to receive a grant of the EZ Application;

WHEREAS, the Parties wish to avoid further costly and lengthy proceedings before the Federal Communications Commission (the "Commission" or "FCC") and possibly the courts, as well as

the burden that such proceedings impose upon the personnel and resources of the Commission, the courts, and the Parties;

WHEREAS, the Parties believe that this Agreement will be in the public interest in that it will assist in resolving the WBZZ Hearing;

WHEREAS, the Parties pledge mutual cooperation in effectuating the goals of this Agreement; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the Presiding Judge and/or the Commission or its Mass Media Bureau and subject to satisfaction of the conditions specified herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

1. Within one business day after the date hereof, EZ and ACGI will file this Agreement with the Presiding Administrative Law Judge in the WBZZ Proceeding together with a joint request for its approval (the "Joint Request"), which EZ's counsel shall draft subject to approval by ACGI's counsel. The Joint Request shall include a request that the Presiding Judge either

(a) approve this Agreement, with any necessary waiver of the FCC's rules to permit EZ or its designated purchaser to acquire the stock of ACGI for \$4.5 million as set forth in Paragraph 2, contingent upon and subject to the following conditions:

(i) dismissal of the ACGI Application with prejudice; and

- (ii) grant of the EZ Application; or
- (b) immediately certify to the full Commission the question whether Section 73.3523 of the FCC's rules should be waived to permit approval of this Agreement, and, upon issuance of such waiver, the Presiding Judge or the Commission, as appropriate, shall take the steps noted in (a).

The Joint Request shall include (i) specific requests that the ACGI Application be dismissed and the EZ Application be granted upon approval of this Agreement by the FCC and (ii) any other information or documents required by the FCC.

2. Within five business days after release of a final order or orders approving the Agreement, authorizing payment by EZ to ACGI of \$4.5 million, dismissing the ACGI Application, and granting the EZ Application, EZ or its designated purchaser will acquire the stock of ACGI for \$4.5 million by wire transfer or certified check. The term "final order" shall mean an order that is no longer subject to further administrative or judicial review. No later than 20 days after release of an order or orders approving the Agreement, authorizing EZ to purchase the stock of ACGI for \$4.5 million, dismissing the ACGI Application and granting the EZ Application, EZ shall deposit the \$4.5 million in escrow pursuant to a mutually acceptable escrow agreement, which shall provide that all interest shall be payable to EZ.

3. Beginning upon the execution of this Agreement, and continuing while this Agreement is in effect, neither EZ nor ACGI shall file any pleading, conduct any discovery, or make any written or oral request to the Presiding Judge, or take any other action in the WBZZ Hearing, except for (i) the filing of the Joint Request and such further filings as may be necessary to obtain grant of such request; (ii) such filings as are specifically requested by written order of the Presiding Judge, the Mass Media Bureau, the General Counsel, or any other part of the Commission; and (iii) such filings as may be required in the renewal proceeding in order to prevent dismissal of the ACGI Application prior to approval of this Agreement, in light of FCC rulings such as a ruling lifting the current freeze; provided, however, that the parties shall use their best joint efforts to avoid or defer any such filings so long as the Agreement is pending before the FCC for approval.

4. (a) Beginning on the date of execution of this Agreement, and continuing for a period of ten (10) years thereafter, neither ACGI, nor the ACGI Principals, nor any of ACGI's subsidiaries or affiliates, nor any person or entity commonly controlled or otherwise subject to the control of any ACGI Principal, ACGI or any subsidiary or affiliate thereof (collectively the "ACGI Parties"), shall file, or encourage, induce or pay any other person or entity to file, any document with the Commission (including, but not limited to, any petition to deny, informal objection or mutually exclusive application)

(excluding documents filed in proceedings generally applicable to the broadcast industry as a whole) that opposes the grant of any application to which EZ or any subsidiary or affiliate thereof is a party, or any entity with which EZ had, has, or will have a then-current agreement to provide programming for more than 15% of the broadcast time of a broadcast station between (i) the date of filing of the EZ Application; and (ii) the date ten (10) years from the date of execution of this Agreement.

(b) This paragraph 4 does not prohibit the ACGI Parties from filing with the Commission a declaratory statement in good faith bringing relevant information to the Commission's attention, so long as the statement does not object, formally or informally, to the grant of an application.

5. This Agreement shall become null and void and the Parties shall have no further obligation to each other if the Joint Request is denied, or, if within six (6) months of the date of this Agreement, this Agreement is not approved, the ACGI Application is not dismissed, and the EZ Application is not granted.

6. The Parties, and their principals, represent and warrant that they have carefully read and fully understand this Agreement, that they execute this document voluntarily as their own free act and deed, with full knowledge of its significance, effects, and consequences.

7. This Agreement will be executed in identical counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

8. Recognizing that this Agreement is expressly subject to the approval of the Presiding Judge and the need for the Presiding Judge's, the Mass Media Bureau's, and/or the Commission's approval prior to the implementation of all its terms, the Parties shall cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, as the case may be, all additional information that may be necessary or appropriate to comply with Section 73.3523 of the Commission's Rules. The Parties agree to provide the Commission in a timely manner with such information as it reasonably requests. The Parties further agree to use all reasonable efforts in the preparation and filing of all documents that may be necessary or appropriate to reach the results contemplated by this Agreement. Further, neither party shall confer with the Hearing Branch of the Mass Media Bureau concerning this Agreement without the presence or participation by telephone of the other Party. Each party shall bear its own expenses for the preparation of this Agreement and all documents incidental thereto.

9. No Party or its officers, directors, shareholders, agents, employees, affiliates, related companies and entities, successors, and assigns, shall, except as specified in this paragraph or as consented to in writing by the other Party,



divulge to the public any terms of this Agreement or any negotiations or discussions among the Parties relating thereto. Notwithstanding the foregoing, nothing in this Paragraph is intended to preclude any Party, or any officer, director, shareholder, employee, affiliate, related company or entity, successor or assign, from disclosing to the public the fact of the filing of this Agreement with the Commission and/or the fact(s) that this Agreement contemplates (i) the dismissal of the ACGI Application and (ii) the grant of the EZ Application. The Parties agree to consult with each other concerning any publicity as to this Agreement while this Agreement is in effect. This confidentiality provision shall not prohibit any Party, or its officers, directors, shareholders, agents, employees, affiliates, related companies and entities, successors, and assigns, from complying with a subpoena or disclosing information otherwise required by law or offered in response to or reasonably connected with other governmental requests or judicial proceedings.

10. It is the intent of the Parties hereto that the obligations contemplated hereunder comply in all respects with the Communications Act of 1934, as amended, and all applicable rules, regulations, and policies of the FCC. If any provision of this Agreement shall be declared void, illegal, or invalid by any governmental authority with jurisdiction thereof, any Party shall have the right to promptly request a meeting with the other Party in which case the Parties will use reasonable efforts to reach

agreement on lawful substitute provisions in place of said offending provision so as to effectuate the Parties' intent as expressed herein. In any event, the remainder of this Agreement shall remain in full force and effect without such offending provision so long as such remainder substantially reflects the original agreement of the Parties hereunder.

11. This Agreement is the only agreement among the Parties hereto and contains all of the terms and conditions agreed upon by the Parties with respect to the subject matter hereof. This Agreement may not be amended or modified except by an instrument in writing signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties, their officers, directors, shareholders, agents, employees, affiliates, related companies and entities, successors (including without limitation American Radio Systems Corporation and its affiliates, upon consummation of the merger proposed in FCC File Nos. BTCH-961001GG et seq.) and assigns. Each Party warrants to the others that it has full power and authority to enter into this Agreement, and to perform its obligations hereunder.

12. This Agreement shall be construed under the laws of the United States and the Commonwealth of Virginia.

13. The Parties agree that the benefits conferred on the Parties under this Agreement are unique, and that monetary damages for the breach of this Agreement would be difficult or impossible to quantify. Therefore, the Parties stipulate that specific performance shall be appropriate as a remedy for breach

of this Agreement in addition to other legal or equitable remedies, including monetary damages, available under this Agreement or under the laws of the United States and the Commonwealth of Virginia. If any legal action is brought by either party arising out of or with respect to this Agreement, the prevailing party shall be entitled to recover, in addition to any other legal or equitable relief to which it may be entitled, all costs of maintaining, defending or bringing such action including but not limited to reasonable attorneys' fees.

14. This Agreement shall be effective upon its execution.

15. ACGI and each of the ACGI Principals hereby jointly and severally represent and warrant to EZ that (i) the ACGI Principals own all of the issued and outstanding capital stock of ACGI, and that there are no options, warrants, or other rights to acquire any equity interest in ACGI; and (ii) that ACGI has never conducted any business aside from prosecution of the ACGI Application and has no liabilities, fixed or contingent.

16. ACGI and each of the ACGI Principals hereby jointly and severally agree to indemnify and hold harmless EZ and its officers, directors, and affiliates from and against any and all liabilities, claims, damages, and expenses arising from (i) EZ's (or its designated purchaser's) acquisition or ownership of the capital stock of ACGI; (ii) any breach by ACGI or the ACGI Principals of any representation, warranty, or covenant in this Agreement; or (iii) any claims by any former officers, directors,

shareholders, agents, or creditors of ACGI. This indemnification shall survive any termination of this Agreement.

17. Any notices, requests, statements, or any other communications to be given hereunder shall be in writing and shall be sent by first class mail, postage prepaid, to the Parties as follows:

If to EZ:

Mr. Alan Box  
EZ Communications, Inc.  
10800 Main Street  
Fairfax, Virginia 22030

with a copy to:

M. Anne Swanson, Esquire  
Koteen & Naftalin, L.L.P.  
1150 Connecticut Ave., N.W.  
Washington, D.C. 20036

If to Allegheny or the ACGI Principals:

Names and Addresses on Exhibit A

with a copy to:

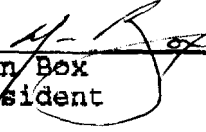
Gene A. Bechtel, Esquire  
Bechtel & Cole, Chartered  
1901 L Street, N.W.  
Suite 250  
Washington, D.C. 20036

or to such other address or to such other person as either party may designate by notice given in writing. Any notice, request, statement, or other communication will be deemed to have been given three days after it was mailed.

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IN WITNESS WHEREOF, the Parties have affixed their  
signatures to this Agreement on the date(s) indicated below.

EZ PITTSBURGH, INC.

Date: November 9, 1996 By   
Alan Box  
President

ALLEGHENY COMMUNICATIONS GROUP, INC.

Date: \_\_\_\_\_ By \_\_\_\_\_  
Herbert E. Long, Jr.  
President

ACGI PRINCIPALS

By \_\_\_\_\_  
Herbert E. Long, Jr.

By \_\_\_\_\_  
Herbert E. Long, III

By \_\_\_\_\_  
Lorraine H. Brown

By \_\_\_\_\_  
Diane J. Duggin

By \_\_\_\_\_  
Eldridge Smith

IN WITNESS WHEREOF, the Parties have affixed their  
signatures to this Agreement on the date(s) indicated below.

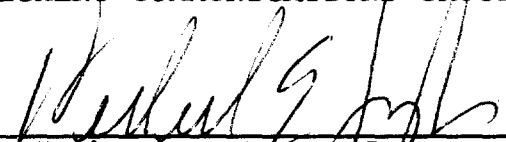
EZ PITTSBURGH, INC.

Date: \_\_\_\_\_

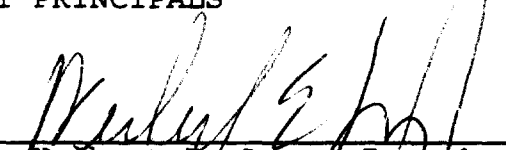
By \_\_\_\_\_  
Alan Box  
President

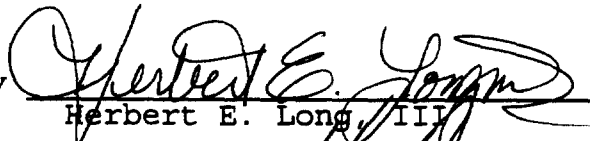
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Date: 11-8-96

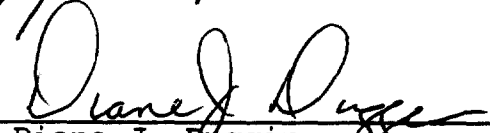
By   
Herbert E. Long Jr.  
President

ACGI PRINCIPALS

By   
Herbert E. Long Jr.

By   
Herbert E. Long, III

By   
Lorraine H. Brown

By   
Diane J. Duggin

By   
Eldridge Smith

12  
By William E. Floyd  
William E. Floyd

By Hazel M. Floyd  
Hazel M. Floyd

By Alicia Perkins  
Alicia Perkins

By Odessa Floyd  
Odessa Floyd

By James C. Floyd  
James Floyd, Sr.

By William Thompson  
William Thompson

By Nicholas Perkins  
Nicholas Perkins

**EXHIBIT B**



DECLARATION

I, Alan L. Box, declare under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief:

1. I am the president and director of EZ Pittsburgh, Inc. ("EZ"), licensee of WBZZ(FM), Pittsburgh, Pennsylvania. EZ's application for renewal of its license is pending in FCC File No. BPH-910401C2, and it was designated for hearing in MM Docket No. 93-88.

2. The Settlement Agreement attached as Exhibit A to the Joint Request for Approval of Agreement constitutes the entire agreement between EZ and Allegheny Communications Group, Inc. ("ACGI"). The Agreement provides for payment of \$4.5 million to ACGI. No other consideration will be paid by EZ to ACGI.

By   
Alan L. Box

Date: 11/12/96